

**REMARKS**

Reconsideration of the above-identified patent application, as amended, is respectfully requested.

Enclosed herewith is a "Revocation of Power of Attorney and Appointment of New Power of Attorney by Inventors." It is requested the Revocation and Appointment be made a matter of record.

Referring to the order of objections and rejections in the Examiner's Office Action, applicant has herewith amended the Abstract of the Disclosure to eliminate the legal phraseology while stating the technical disclosure of the application. In addition, the title of the invention has been amended in accordance with the suggestion of the Examiner.

Claims 1, 7 and 12 have been amended to add the word "and" at the end of the step preceding each of the last steps of the claims as required by the Examiner.

Claims 2-6, 8-9 and 11 have been amended to delete the limitation "the other elements" or "the elements noted" with the actual elements inserted into the claim. Further, claims 19-21 have been amended to delete the word "such as." It is therefore believed the rejection under 35 USC 112 should be removed since the claims have been amended in accordance with the Examiner's requirement.

The applicants reduced to practice the claimed invention in early April 2001. Enclosed herewith is a Declaration of one of the inventors, Bill Oltman who states in paragraph 6 that in April 2001 he and Oscar D. Sandlin, the co-inventor, developed the paint by combining the paint ingredients with a powder resulting in a potpourri scent. In paragraph 7, the ingredients of the paint are listed and agree with the ingredients and

Amendment Response  
Serial No. 10/656,553      Group Art Unit 1714  
Atty. Docket No. 5795-3  
Page 9 of 12

steps listed in the claims of the subject patent application. Shortly after development of the potpourri paint, he painted an apartment unit that was heavy with a cigarette smell resulting from the occupancy of the prior tenants. The painting of the apartment walls with the potpourri paint was provided without charge to determine if the scented paint would eliminate the smoke smell. Further, as stated in paragraphs 10 and 11 of Mr. Oltman's Declaration, the co-inventors were encouraged with the results of the painting of apartment unit 1601 since the cigarette smell had disappeared. As a result, they continued to experiment in developing various scents while increasing the longevity of the scent. The reduction to practice of the claimed method and mixture in April 2001 was followed by the filing of the subject patent application in 2003.

The reduction to practice of the subject invention occurred prior to the filing dates of the primary cited references. For example, the U.S. Patent 6,706,107 issued to Walker has an actual filing date of February 12, 2002 which was after the reduction to practice of the subject invention. The provisional application upon which the Walker patent was based did not actually disclose the addition of scent to the paint. Likewise, the published U.S. Patent Application to Meleeny et al. has a filing date of June 17, 2002 which was after the reduction to practice of the claimed invention.

The rejection of claims 1-11, 13-14 and 16-17 under 35 USC 102(e) based upon the Walker patent should therefore be removed. Likewise, the rejection of claims 1 and 7 under 35 USC 102(e) as being anticipated by Meleeny et al. should be removed. In addition, the rejection of claims 1 and 7 under 35 USC 103(a) as being unpatentable over Walker in view of Meleeny should be removed as well as the rejection of claims 1-11, 13-14 and 16-17 under 35 USC 103(a) as being unpatentable over Meleeny in view of

Amendment Response  
Serial No. 10/656,553      Group Art Unit 1714  
Atty. Docket No. 5795-3  
Page 10 of 12

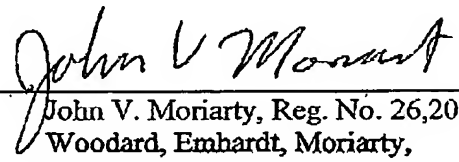
other references. The same analysis applies to the rejection of claims 12, 15 and 18 as being unpatentable over Meleeny, claims 19-21 as being unpatentable over Walker in view of Meleeny and claims 22-24 as being unpatentable over Walker. These rejections should also be removed since the Walker and Meleeny references have filing dates after the reduction to practice of the claimed invention.

To buttres the Declaration of Bill Oltman, there is enclosed herewith a Declaration of Beverly A. Rahe and a Declaration of Brian D. Irwin. Beverly A. Rahe was the Property Manager for a housing development entitled The Grande Reserve at Geist. As such, she provides in her Declaration the background of the smoke smell in Unit 1601 that was vacated in March 2001. In early April 2001, she authorized Bill Oltman to paint Unit 1601 in accordance with the normal practice to ready the room for new tenants. The room was painted with regular paint in accordance with the standard practice. As a result, after repeated efforts and even after painting Unit 1601, the cigarette smoke smell still was prevalent in Unit 1601. At this point, she states in paragraph 8 that Bill Oltman volunteered to repaint Unit 1601 without charge with a scented paint. In paragraph 9, Beverly Rahe states that in early April 2001 Bill Oltman painted Unit 1601 with the scented paint at which time the smell of smoke was eliminated and the unit was thereafter leased. A similar Declaration is provided of Brian D. Irwin who was the maintenance supervisor for the same housing development in April 2001. He states the various claims of Beverly Rahe and more specifically states in paragraph 7, at approximately one week after Mr. Oltman painted Unit 1601 he then repainted the walls of the same unit with the scented paint with the result the cigarette smell disappeared.

Amendment Response  
Serial No. 10/656,553      Group Art Unit 1714  
Atty. Docket No. 5795-3  
Page 11 of 12

In summary, the claimed invention namely the method of making a long-lasting scented finish paint as well as the mixture provided by the method was in existence and possessed by the co-inventors in April 2001. This date was prior to the relevant date of the Walker and Meleeney references as well as other references as well as certain other references. It is therefore believed the application is in condition for allowance and such action by the Examiner is respectfully requested.

Respectfully submitted,

By   
John V. Moriarty, Reg. No. 26,207  
Woodard, Emhardt, Moriarty,  
McNett & Henry LLP  
Bank One Center/Tower  
111 Monument Circle, Suite 3700  
Indianapolis, Indiana 46204-5137  
(317) 634-3456

**Abstract of the Disclosure**

Please replace the Abstract of the Disclosure with the following rewritten

**Abstract of the Disclosure:**

--A long-lasting scented paint mixture and method for creating the scented paint.

A pigment, binder, solvent, vehicle and scenting agent are selected and mixed providing a paint having a scent that is long-lasting after drying.--